SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 269

INTERSTATE CIRCUIT, INC., TEXAS CONSOLIDATED THEATRES, INC., KARL HOBLITZELLE, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA.

No. 270

PARAMOUNT PICTURES DISTRIBUTING COMPANY, INC., ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

STATEMENT AS TO JURISDICTION.

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Counsel for Appellants.

THOMPSON, KNIGHT, BAKER, HARRIS & WRIGHT,
Of Counsel.

INDEX.

Subject Index.

Table of Cases Cited.

Statute Cited.

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STATEMENT OF BASIS UPON WHICH APPELLANTS CONTEND THAT THE SUPREME COURT OF THE UNITED STATES HAS JURISDICTION TO REVIEW ON APPEAL THE DECREE APPEALED FROM, AS REQUIRED BY SUPREME COURT RULE 12.

Pursuant to Supreme Court Rule 12, paragraph 1, Interstate Circuit, Inc., Texas Consolidated Theatres, Inc., Karl

Hoblitzelle and R. J. O'Donnell * file this their statement showing the basis on which said appellants contend that the Supreme Court has appellate jurisdiction to review on appeal the final decree appealed from herein, as follows:

1. The Supreme Court of the United States entertained jurisdiction in this cause on April 25, 1938, set aside the decree, and directed the trial court to file findings of fact and conclusions of law. The statement showing jurisdiction in this cause filed with this Court and printed is respectfully adopted here. That statement shows under the statutes recited therein that this appeal from the final decree of the District Court lies to the Supreme Court and must be taken within sixty days from the entry thereof.

2. The final decree appealed from was entered on the 9th day of June, 1938, in the office of the Clerk of the United States District Court for the Northern District of Texas, Dallas Division.

3. The application for appeal was presented to the District Judge on the 6th day of July, 1938.

4. The appeal herein is from a final decree of the said District Court in a civil case in equity brought by the United States against the defendants seeking an injunction against the defendants under the provisions of Sections 1 and 4 of the Sherman Anti-Trust Act (26 Stat. 209, as amended by 36 Stat. 1167; 15 U. S. C. A., Secs. 1 and 4) upon the ground that certain agreements entered into by the defendants contained provisions in violation of Section 1 of said Sherman Act, as amended. The Court held that said provisions violated said Act and enjoined defendants from enforcing them and from including them in any future license agreements.

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* CLERK'S NOTE.—The jurisdictional statement in No. 270 is identical with that in No. 269 and is not printed.

5. The cases believed to sustain the jurisdiction of the Supreme Court are as follows:

Atlantic Cleaners & Dyers, Inc., et al., v. *United States*, 287 U. S. 427, 431;

Swift & Co. v. *United States*, 276 U. S. 311, 322;

United States v. *California Canneries*, 279 U. S. 553, 558;

and the cases cited therein.

THOMPSON, KNIGHT, BAKER, HARRIS & WRIGHT,
JNO. R. MORONEY,
GEO. S. WRIGHT,
Counsel for Appellants, Interstate Circuit, Inc., et al.

EXHIBIT "A".

The Court's Findings of Fact and Conclusions of Law. Filed May 17, 1938.

In accordance with an order from the Supreme Court and Equity Rule No. 70½, I make the following special findings of fact and conclusions of law in the above styled cause:

1. *Definitions.*

1. A feature picture is a film of five reels or more and a reel is approximately 1,000 feet in length.

2. First run means the first exhibition of a picture in a given locality and subsequent run means a subsequent exhibition of the same picture in the same locality. Motion picture theatres giving first run exhibitions of feature pictures distributed by the distributor defendants will be referred to herein as first run theatres and those giving subsequent run exhibitions of such feature pictures will be referred to herein as subsequent run theatres.

3. Double featuring or double billing is the showing of two feature pictures on the same program at the same admission price.

4. The words "admission price" as used herein mean a lower floor night admission price for adults.

A Class A picture is a feature picture shown in the cities of Dallas, Fort Worth, Houston or San Antonio at an admission price of 40¢ or more.

The restrictions as to admission price and against double features hereinafter referred to applied only to Class A pictures.

5. Certain of the corporate defendants will be referred to herein by abbreviated titles as follows:

Defendants	*Titles.*
Interstate Circuit, Inc.	Interstate
Texas Consolidated Theatres, Inc.	Texas Consolidated
Columbia Pictures Corporation	Columbia
Twentieth Century-Fox Film Corp'n	Fox
Metro-Goldwyn-Mayer Distributing Corporation	Metro
Paramount Pictures Distributing Company, Inc.	Paramount
RKO Radio Pictures, Inc.	RKO
United Artists Corporation	United Artists
Universal Film Exchanges, Inc.	Universal
Vitagraph, Inc.	Vitagraph

6. The defendants Interstate, Texas Consolidated, Karl Hoblitzelle and R. J. O'Donnell will be sometimes referred to herein as the exhibitor defendants and the other defendants will be sometimes referred to herein as the distributor defendants.

II. *The Defendants.*

7. Interstate operates 43 motion picture theatres located in Austin, Dallas, Fort Worth, Galveston, Houston and San Antonio. It operates all of the first run theatres in these cities except one in Houston which is affiliated with Metro. In each of these cities it operates two or more first run theatres which regularly charge an admission price of 40¢ or more. In addition, it operates several subsequent run theatres in each of these cities. In all of these cities except Galveston there are other subsequent run theatres competing with Interstate's first run and subsequent run theatres.

8. Texas Consolidated operates 66 theatres, some of them first run and others subsequent run houses. These theatres are located in various Texas cities other than those in which Interstate operates theatres and in Albuquerque, New

Mexico. In some of these cities there are no competing theatres and in the leading cities of Abilene, Albuquerque, Amarillo, El Paso, Waco and Wichita Falls there are no competing first run theatres.

9. Defendant Karl Hoblitzelle is president and defendant R. J. O'Donnell is general manager of both Interstate and Texas Consolidated and they are in active charge and control of the business and operations of these two corporations. Interstate and Texas Consolidated are affiliated with each other and with Paramount.

10. Defendant Metro Goldwyn Mayer Distributing Corporation of Texas is a subsidiary of and acts as the Texas agent for Metro. Defendant Twentieth Century Fox Film Corporation of Texas is a subsidiary of and acts as the Texas agent for Fox. The other eight distributor defendants distribute motion picture films in interstate commerce throughout the United States. They solicit from exhibitors located in Texas applications for licenses to exhibit films; forward such applications to their New York offices, where they are granted; ship films from points outside of Texas to their respective film exchanges in that state, from which exchanges the films are delivered and redelivered to local exhibitors; and finally reship the films to laboratories maintained outside of Texas. They distribute about 75% of the total feature motion picture films which are distributed for exhibition in the United States.

11. All of the feature pictures distributed by the distributor defendants are copyrighted and each distributor defendant either is the copyright proprietor of each picture distributed by it or has the exclusive right to license its exhibition in the United States.

III. *The Conspiracy.*

12. On April 25, 1934, defendant O'Donnell addressed an identical letter (Agreed Statement of Facts, Par. 10), written on Interstate's letterhead to the Texas branch manager, located at Dallas, of each distributor defendant. The letter stated that Interstate, in contracting for pictures for the coming 1934-1935 season, would insist that any picture shown

first run in an Interstate theatre at an admission price of 40¢ or more should not be exhibited at any future time in the same city at an admission price of less than 25¢. On July 11, 1934, after defendants Hoblitzelle and O'Donnell had discussed the proposed price restriction with George Shaeffer, of Paramount in Los Angeles, California, sometime after April 25, 1934, O'Donnell sent a second letter (Agreed Statement of Facts, Par. 11), written on Interstate's letterhead, which was addressed jointly to the various Texas branch managers of the distributor defendants. In this letter he renewed and amplified his earlier demand and also demanded that any feature picture shown in a first run Interstate theatre at an admission price of 40¢ or more should not thereafter be double billed in the same city. The letter also included a demand that any feature picture exhibited in a Texas Consolidated first run theatre located in the Rio Grande Valley at an admission price of 35¢ or more should not thereafter be exhibited in the same city at an admission price of less than 25¢.

13. Prior to the 1934-1935 season, the licensing contracts of the distributor defendants generally provided for a minimum admission price of 15¢, although in some cases the minimum was 10¢. There is no evidence that these contract provisions were uniform or were adopted as a result of any agreement among the distributor defendants or any agreement between any of them and any of their licensees. This price restriction represented a large increase in the minimum admission price, and also contemplated that distributor defendants agree to require that subsequent run exhibitors charge the requested minimum admission price. These price restrictions was an important departure from previous practice.

14. The printed license agreement used by Vitagraph since the beginning of the 1933-1934 season has contained a provision prohibiting double billing. The regular printed forms of contract used by Metro and RKO throughout the United States for the 1934-1935 and subsequent seasons include an agreement by the licensee not to double bill, but the date of the adoption of these contract forms is not disclosed by the record. Each distributor defendant thus re-

stricting double billing was free to abandon the restriction at any time or to waive it in particular cases, whereas defendant O'Donnell proposed that the distributor defendants bind themselves by agreement to maintain such a restriction. The proposed restriction upon double billing constituted a novel and important departure from prior practice.

15. The branch managers, upon receipt of the letters referred to in paragraph 12, notified their home offices. The branch managers themselves had no authority to agree to the proposed restrictions and in the negotiations which followed with representatives of Interstate with reference to contracts for the 1934-1935 season each distributor defendant was represented, not only by its branch manager, but also by one or more superior officials from outside the State of Texas. Four of the eight branch managers could find in their files no correspondence whatever relating to the letters from defendant O'Donnell. Of the correspondence found in the files of the other four Dallas offices, in one instance the correspondence was not introduced in evidence. In each of the other three instances hostility to or criticism of the proposed restrictions was expressed. In one instance the branch manager wrote that "a policy of this sort is extremely dangerous to everyone concerned and cannot help, in the long run, but cost us all plenty of money." A letter of a representative of another distributor defendant stated: "They are automatically trying to set up a model arrangement for the United States without giving us anything to say about it." A letter from a representative of a third distributor defendant advised that defendant O'Donnell was "making some unfair demands" and imposing conditions "of which he is a flagrant violator."

16. During the summer of 1934 defendants Hoblitzelle and O'Donnell, representing Interstate, conferred at various times with the representatives of each distributor defendant. In the course of these conferences all of the distributor defendants agreed with Interstate to impose both of the requested restrictions upon subsequent run exhibitors. Interstate's request had covered feature pictures exhibited at any first run theatre operated by it which charged an admission price of 40¢ or more and there were five cities,

Austin, Dallas, Fort Worth, Houston and San Antonio, where Interstate operated such theatres and where there were competing subsequent run theatres. The various distributor defendants, with substantial unanimity, agreed to impose and did impose these restrictions only in four of these cities, Dallas, Fort Worth, Houston and San Antonio. Since Metro did not grant licenses to any subsequent run exhibitor in Houston, where an affiliate of Metro operated a first run theatre, it did not agree to impose the restrictions in Houston. Universal imposed restrictions on subsequent run theatres in Austin in the 1934-1935 season, but in the two following seasons, it, like all the other distributor defendants, imposed restrictions only in the four cities previously mentioned. Interstate agreed to accept and subsequently observed both of the restrictions as to its own subsequent run theatres in Dallas, Fort Worth, Houston and San Antonio.

17. Metro and Paramount incorporated the agreement to impose restrictions in their written contracts with Interstate for the 1934-1935 season. The other distributor defendants carried out the agreement without embodying it in their written licensing contracts with Interstate for the 1934-1935 season. The provisions imposing the restrictions in the licensing contracts made by the various distributor defendants with subsequent run exhibitors varied slightly in language or phraseology, but the substance of the restrictions imposed by each distributor defendant was the same.

18. None of the distributor defendants except Paramount, and it only for the 1934-1935 season, imposed any restriction as to the admission price upon subsequent run exhibitors in cities, either in the Rio Grande Valley or elsewhere, in which Texas Consolidated operates its theatres. There is no evidence that, prior to or during the negotiations with the distributor defendants, defendants Hoblitzelle and O'Donnell withdrew the demand for a price restriction in the Valley which was made on behalf of Texas Consolidated in the letter of July 11, 1934.

It is agreed, however, that no demands were made in behalf of the defendant, Texas Consolidated, upon the dis-

tributor defendants for the imposition of said restrictions for the seasons 1935-1936 and 1936-1937.

19. The president of an organization composed of and representing independent exhibitors in Texas, after learning of the restrictions, called a meeting of the exhibitors affected and a committee was appointed to endeavor to persuade defendant Hoblitzelle to waive the proposed restrictions. The committee was given a hearing but met with no success. Defendant O'Donnell, who was aware of the hostility of the independent exhibitors to the restrictions, asked for and was given an opportunity to address a convention of their organization. The restrictions were strongly opposed by "independent" exhibitors, that is, those who are not affiliated with any distributor defendant.

20. Either of the two proposed restrictions could have been put into effect by any one or more of the distributor defendants without putting the other into effect. Adoption of the restrictions by all distributor defendants alike was financially beneficial to each, but in the absence of substantially unanimous action by them with respect to the restrictions, adoption of either one of the restrictions or of both by one or more individual distributor defendants would have caused such distributor defendants to lose the business of subsequent run exhibitors who were unwilling to conform to the restrictions and would have caused them to suffer a serious loss of the customer good will of independent exhibitors generally. The more nearly unanimous the action of the distributor defendants in imposing restrictions, the greater the benefit that would be derived by Interstate.

21. The distributor defendants did not call as witnesses any of the superior officials from outside the State of Texas who negotiated the 1934-1935 contracts with Interstate. The most important issue in the case was whether the distributor defendants, in agreeing with Interstate to impose restrictions, acted pursuant to an agreement or understanding among themselves, and facts material to this issue were within the peculiar knowledge of these superior officials.

22. From the facts set forth in findings 12 to 21, inclusive, and particularly from the unanimity of action on the part of the distributor defendants, not on one respect only, but in many different respects wherein, apart from agreement, diverse action would inevitably have resulted, I find that the distributor defendants agreed and conspired among themselves to take uniform action upon the proposals made by Interstate and that they agreed and conspired with each other and with Interstate to impose the restrictions requested by Interstate upon all subsequent run exhibitors in Dallas, Fort Worth, Houston and San Antonio.

23. Hoblitzelle and O'Donnell, with their large interests in and managements of Interstate and Texas Consolidated, discussed among themselves the demand for an inclusion of two restrictions in all contracts that they were to make with defendant distributors on and after 1934-35. Hoblitzelle consulted his attorney and O'Donnell wrote the first letters hereinbefore mentioned on April of that year. Shortly after those letters were written, each was in California during meetings of at least some of the defendant distributor executives, and there then followed the demand later of July, 1934, heretofore mentioned. These discussions and these demands appear to have originated with Hoblitzelle and O'Donnell. Not with the distributor defendants. Such restrictions appeared to be advisable and imperative from the standpoint of Hoblitzelle and O'Donnell to their own interests as first and subsequent run exhibitors in the towns mentioned and as beneficial to the distributor defendants. The Hoblitzelle and O'Donnell interests were the largest purchasers of pictures in the covered area from the distributor defendants. Hoblitzelle and O'Donnell interests were active competitors with many subsequent run houses in the cities shown in these findings.

24. By 1934 the cost of operation of theatres and the cost of production of class A feature pictures had been steadily increasing. The cost of feature pictures distributed by the distributor defendants, ranged from $150,000.00 to $2,500,000.00. First run revenue had not kept pace with this increase.

IV. *The Effect of the Conspiracy.*

25. Prior to the 1934-1935 season most of the independently operated subsequent run theatres in Texas charged an admission price of 15¢ or 20¢ and it was also customary to double bill, either on certain days in the week or as occasion required. The restrictions imposed by the distributor defendants upon subsequent run exhibitors in Dallas, Fort Worth, Houston and San Antonio caused some of said exhibitors, in order to be able to obtain pictures subject to the restrictions, to increase their admission price to 25¢, either generally or when pictures subject to the restrictions were shown, and have prevented these exhibitors from double billing any of such pictures. Practically all of the exhibitors who have so increased their admission price would not have done so but for the restrictions imposed by the distributor defendants. The restrictions imposed by the distributor defendants have caused other subsequent run exhibitors who were unable or unwilling to accept the restrictions to be deprived of the opportunity to exhibit any of the pictures subject to the restrictions, the best and most popular of all new feature pictures. The effect of the restrictions upon the low-income members of the community patronizing the theatres of these exhibitors was to withhold from them altogether the best entertainment furnished by the motion picture industry.

26. The restrictions imposed by the distributor defendants have increased the income of Interstate by attracting to its first run theatres charging an admission price of 40¢ or more patrons who, if the pictures shown at such theatres were later exhibited in the same city at a theatre charging an admission price of less than 25¢ or as part of a double feature program, would view these pictures at such other theatres. The attendance thus deflected from subsequent run theatres to Interstate's first run theatres has reduced the income of subsequent run exhibitors and there is no evidence that such loss in income has been offset by the higher scale in admission prices which, because of the restrictions, some of the subsequent run theatres have adopted. Since the license fees which the distributor defendants charge Interstate for exhibiting feature pictures in its first run

theatres are generally based upon a percentage of Interstate's receipts from these pictures, the increased income which Interstate has received because of the restrictions has also increased the income of the distributor defendants.

27. Defendant Hoblitzelle sought legal advice before he began crusading for these contracts. The attorney advised him that since distributors were copyright owners, they would have a right to enter into such stipulation with his company.

Conclusions of Law.

1. The court has jurisdiction of this cause under the provisions of the act of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies."

2. All of the distributor defendants by acting pursuant to a common plan and understanding in imposing the restrictions as to minimum night adult admission price upon subsequent run exhibitors in the cities of Dallas, Houston, Fort Worth and San Antonio, for the season 1934-1935 and seasons subsequent thereto, suggested by Interstate, Hoblitzelle and O'Donnell, engaged in a combination and conspiracy in restraint of trade and commerce with Interstate, Hoblitzelle and O'Donnell, and with each other.

3. All of the distributor defendants (with the exception of Vitagraph, Inc., Metro-Goldwyn-Mayer Distributing Corporation and Metro-Goldwyn-Mayer Distributing Corporation of Texas), by acting pursuant to a common plan and understanding in imposing the restrictions against double featuring suggested by Interstate, Hoblitzelle and O'Donnell, upon subsequent run exhibitors in the cities of Dallas, Houston, Fort Worth and San Antonio, for the season 1934-1935 and seasons subsequent thereto, entered into and engaged in a combination and conspiracy in restraint of trade and commerce with Interstate, Hoblitzelle and O'Donnell, and with each other.

4. Said combination and conspiracy among the defendants restrained interstate commerce in motion picture films, that is, it restrained the rental and shipment, in the course of interstate commerce, of motion picture films by and be-

tween the distributor defendants and subsequent run exhibitors.

5. Said combination and conspiracy effected an unreasonable restraint of interstate commerce in that it constituted an agreement by those having a substantial monopoly of the best of all available feature pictures (1) to impose upon certain subsequent run exhibitors, customers of the defendant distributors, uniform and restrictive provisions in their exhibition contracts, and (2) not to enter into exhibition contracts with, that is, to boycott, any of these exhibitors unable or unwilling to accept such contract provisions.

6. The restraint of interstate commerce effected by the united exercise by the distributor defendants of their individual monopolies respecting the exhibition of their copyrighted feature pictures is not within any privileges or immunities conferred by the copyright law.

Apart from the combination and conspiracy referred to in paragraphs 2 and 6 inclusive of these conclusions I reach the following conclusions regarding certain provisions of each of the various license agreements involved:

7. Said provisions as to minimum night adult admission price appearing in the license agreements between all of the distributor defendants and subsequent run exhibitors in the cities of Dallas, Houston, Fort Worth and San Antonio, for the seasons 1934-35 and subsequent thereto, restrain trade and commerce in feature films and are illegal and void.

8. The provisions against double featuring appearing in the license agreements between all of the distributor defendants (except Vitagraph, Metro and Metro-Goldwyn-Mayer Distributing Corporation of Texas), and subsequent run exhibitors in the cities of Dallas, Houston, Fort Worth and San Antonio, for the seasons 1934-35 and subsequent thereto, restrain trade and commerce in feature films and are illegal and void.

9. Such provisions as bind the respective distributors to impose said restrictions as to minimum night adult admission price upon subsequent run exhibitors in the cities of Dallas, Houston, Fort Worth and San Antonio, as appear

in the license agreements between any or all of the distributor defendants and Interstate, for the seasons 1934-35 and subsequent thereto, restrain trade and commerce in feature films and are illegal and void.

10. Such provisions as bind any or all of the distributor defendants, (except Vitagraph, Metro and Metro-Goldwyn-Mayer Distributing Corporation of Texas), to impose said restrictions against double featuring upon subsequent run exhibitors in the cities of Dallas, Houston, Fort Worth and San Antonio, as appear in the license agreements between said distributor defendants and Interstate, for the seasons 1934-35 and subsequent thereto, restrain trade and commerce in feature films and are illegal and void.

11. Each and every agreement, whether oral or written, between all of the distributor defendants and Interstate, for the seasons 1934-35 and subsequent thereto, wherein the distributor defendants agree to impose said restrictions as to minimum night adult admission price upon subsequent run exhibitors in the cities of Dallas, Houston, Fort Worth and San Antonio, is illegal and void.

12. Each and every agreement, whether oral or written, between all of the distributor defendants, (except Vitagraph, Inc., Metro-Goldwyn-Mayer Distributing Corporation and Metro-Goldwyn-Mayer Distributing Corporation of Texas), and Interstate, for the seasons 1934-35 and subsequent thereto, wherein the said distributor defendants agree to impose said restrictions against double featuring upon subsequent run exhibitors in the cities of Dallas, Houston, Fort Worth and San Antonio, is illegal and void.

Such undue and unreasonable restraint of interstate commerce is not within any privilege or immunity conferred upon the distributor defendants by the copyright law since the restraint was the product, not solely of the exercise of each defendant distributor's copyright privilege, but of a combination between it and Interstate fixing the terms upon which the distributor defendant would grant to competitors of Interstate license to exhibit certain feature pictures after Interstate's license privilege to exhibit these pictures had expired.

13. The petitioner is entitled to an injunction restraining all of the distributor defendants from enforcing or attempting to enforce said restrictions as to minimum night adult admission price against subsequent run exhibitors in the cities of Dallas, Houston, Fort Worth and San Antonio, and restraining all of the distributor defendants (except Vitagraph, Metro and Metro-Goldwyn-Mayer Distributing Corporation of Texas), from enforcing or attempting to enforce said restrictions against double featuring against subsequent run exhibitors in the cities of Dallas, Houston, Fort Worth and San Antonio.

14. The petitioner is entitled to an injunction restraining Interstate from enforcing or attempting to enforce provisions in its agreements, oral or written, with all of the distributor defendants, binding such distributor defendants to impose said restrictions as to minimum night adult admission price upon subsequent run exhibitors in the cities of Dallas, Houston, Fort Worth and San Antonio, and restraining Interstate from enforcing or attempting to enforce any provisions in its agreements, oral or written, with all of the distributor defendants, (except Vitagraph, Metro and Metro-Goldwyn-Mayer Distributing Corporation of Texas), binding said distributor defendants to impose said restrictions against double featuring upon subsequent run exhibitors in the cities of Dallas, Houston, Fort Worth and San Antonio.

15. That the petitioner is entitled to an injunction restraining all of the defendants, including Texas Consolidated, from continuing in said conspiracy in restraint of trade and commerce and from entering into any similar combination and conspiracy having similar purposes and objects.

16. Attention is respectfully called to a written opinion in this case reported in 20 Fed. Supplement, 868, not as a compliance with Rule 70½, which failure I regret, but as showing substantially these same findings.

In Chambers, at Dallas, May 17, 1938.

(Signed) WM. H. ATWELL,
United States District Judge.